

Remarks

Claims 1-11 are currently pending in the subject application. Claims 7-11 have been withdrawn per an election filed June 8, 2006. Claims 1 and 3 have been amended to correct some antecedent issues and informalities as noted by the Examiner. Such amendments do not limit the scope of the invention. Upon entry of the foregoing amendments, claims 1-6 will be before the Examiner for review.

Claims 1-6 are rejected under 35 USC §112, second paragraph, for indefiniteness. Applicants believe that the amendments above obviate the grounds underlying this rejection. Reconsideration of this 35 USC §112 rejection is requested.

Claims 1-6 are rejected under 35 USC §102(e), as being anticipated by US 2004/0087977 ('977 application). Applicant respectfully traverses. The Office Action cites to paragraph 0015 of the '977 application to support the allegation that the '977 application teaches all of the element of claim 1. A close inspection of paragraph 0015 reveals that it does not teach a method involving "introducing an anvil adapted for use with the anastomosis instrument through a side region of the upper stomach portion. . ." (emphasis added). In contrast, paragraph 0015 teaches the step of "introducing an anvil adapted for use with the anastomosis instrument through an esophagus and into the upper stomach portion. . ." (emphasis added). The method as recited in claim 1 alleviates the need for introduction of an anvil into the esophagus, which avoids dangers associated therewith. Introduction of an anvil via the esophagus creates the risk of puncturing the esophagus with the sharp end of the anvil, or lodging the anvil in the esophagus, which can result in severe, dire consequences for the patient. See page 2, lines 22-25, present application. The methodology recited in claim 1 sets forth an alternative (and superior) new approach to a bypass procedure that is more efficient and avoids the risks of the procedure outlined in the '977 application. Claim 1 sets allows for the entry of the anvil portion through a side region of the newly formed upper stomach region. This simply is not contemplated by the '977 application.

With respect to claim 2, Applicant asserts that claim 2 is dependent on claim 1 and therefore is construed to contain the limitations of claim 1. As noted before, the '977 application does not teach the introduction of an anvil via a side region of the upper stomach portion.

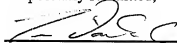
With respect to claims 3-5, the Office Action points to paragraph 0065, lines 9-14. It is unclear how a connection is made between the discussion in this passage and the additional elements recited in respective claims 3-5. Applicant respectfully asserts that it appears that the Office Action mistakes the pivoting of the anvil head to be surgical instrument having a flexible portion having a tip adapted to releasably attach to the anvil. It cannot be fairly, or logically, said that the discussion in paragraph 0065 concerning a pivoting anvil head relates to a surgical instrument comprising a flexible body portion comprising a tip designed to releasably hold an anvil. Moreover, the '977 application nowhere discusses the insertion of such instrument through an opening in a bottom region of an upper stomach portion. Claim 4 recites that the anvil is attached to the tip of the flexible body portion and pulled through the opening formed in claim 3. Nowhere does the '977 application discuss the entry of the anvil through a side region of the upper stomach portion and directed to rest in the opening formed in a bottom region. Accordingly, not all of the limitations in claims 3-5 are taught in the '977 application as required for an anticipatory reference. Claim 6 is construed to contain the limitations of claim 4, and consequently is also not anticipated by the '977 application.

Accordingly, in view of the foregoing remarks, Applicant respectfully asserts that the '977 application does not teach all of the elements of claim 1, nor any claims dependent on claim 1. Therefore, the '977 application does not satisfy the requirements for anticipation. Applicant respectfully requests the reconsideration and withdrawal of this 35 USC §102(e) rejection.

Applicants believe that all claims are in a condition for allowance, and request that a Notice of Allowance be issued. Applicants invite the Examiner to call the undersigned if clarification is needed on any aspect of this response. In addition, the

Applicants request that the Examiner call the undersigned to arrange a telephonic interview if the Examiner believes that not all grounds for rejection have been addressed and overcome.

Respectfully submitted,



Timothy H. Van Dyke

Reg. No. 43,218

Beusse, Wolter, Sanks, Mora & Maire P.A.

390 N. Orange Avenue, Suite 2500

Orlando, FL 32801

Phone: (407) 926-7726